



General Assembly

January Session, 2013

***Raised Bill No. 6543***

LCO No. 3782



Referred to Committee on HUMAN SERVICES

Introduced by:  
(HS)

***AN ACT AMELIORATING THE DEBT OWED TO NURSING FACILITIES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-535 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) For the purposes of this section: (1) "Facility" means an entity  
4 certified as a nursing facility under the Medicaid program or an entity  
5 certified as a skilled nursing facility under the Medicare program or  
6 with respect to facilities that do not participate in the Medicaid or  
7 Medicare programs, a chronic and convalescent nursing home or a rest  
8 home with nursing supervision as defined in section 19a-521; (2)  
9 "continuing care facility which guarantees life care for its residents"  
10 has the same meaning as provided in section 17b-354; (3) "transfer"  
11 means the movement of a resident from one facility to another facility  
12 or institution, including, but not limited to, a hospital emergency  
13 department, if the resident is admitted to the facility or institution or is  
14 under the care of the facility or institution for more than twenty-four  
15 hours; (4) "discharge" means the movement of a resident from a facility  
16 to a noninstitutional setting; (5) "self-pay resident" means a resident

17 who is not receiving state or municipal assistance to pay for the cost of  
18 care at a facility, but shall not include a resident who has filed an  
19 application with the Department of Social Services for Medicaid  
20 coverage for facility care but has not received an eligibility  
21 determination from the department on such application, provided the  
22 resident has timely responded to requests by the department for  
23 information that is necessary to make such determination; and (6)  
24 "emergency" means a situation in which a failure to effect an  
25 immediate transfer or discharge of the resident [that] would endanger  
26 the health, safety or welfare of the resident or other residents.

27 (b) A facility shall not transfer or discharge a resident from the  
28 facility [except] unless (1) such transfer or discharge is necessary to  
29 meet the welfare of the resident which cannot be met in the facility, [or  
30 unless] (2) the resident no longer needs the services of the facility due  
31 to improved health, (3) the facility is required to transfer the resident  
32 pursuant to section 17b-359 or section 17b-360, [or] (4) the health or  
33 safety of individuals in the facility is endangered, [or] (5) in the case of  
34 a self-pay resident, [for the resident's nonpayment or arrearage of  
35 more than fifteen days of] the resident has not paid the per diem  
36 facility room rate or has been in arrearage for more than fifteen days,  
37 [or] (6) the facility ceases to operate, or (7) to the extent permissible  
38 under federal law, the patient has failed for more than sixty days to  
39 pay to the facility the amount of applied income determined in  
40 accordance with the methodology established by the Department of  
41 Social Services for recipients of medical assistance. In each case the  
42 basis for transfer or discharge shall be documented in the resident's  
43 medical record by a physician. In each case where the welfare, health  
44 or safety of the resident is concerned the documentation shall be by the  
45 resident's physician. A facility which is part of a continuing care  
46 facility which guarantees life care for its residents may transfer or  
47 discharge [(1)] (A) a self-pay resident who is a member of the  
48 continuing care community and who has intentionally transferred  
49 assets in a sum which will render the resident unable to pay the costs

50 of facility care in accordance with the contract between the resident  
51 and the facility, or [(2)] (B) a self-pay resident who is not a member of  
52 the continuing care community and who has intentionally transferred  
53 assets in a sum which will render the resident unable to pay the costs  
54 of a total of forty-two months of facility care from the date of initial  
55 admission to the facility.

56 (c) (1) Before effecting any transfer or discharge of a resident from  
57 the facility, the facility shall notify, in writing, the resident and the  
58 resident's guardian or conservator, if any, or legally liable relative or  
59 other responsible party if known, of the proposed transfer or  
60 discharge, the reasons therefor, the effective date of the proposed  
61 transfer or discharge, the location to which the resident is to be  
62 transferred or discharged, the right to appeal the proposed transfer or  
63 discharge and the procedures for initiating such an appeal as  
64 determined by the Department of Social Services, the date by which an  
65 appeal must be initiated in order to preserve the resident's right to an  
66 appeal hearing and the date by which an appeal must be initiated in  
67 order to stay the proposed transfer or discharge and the possibility of  
68 an exception to the date by which an appeal must be initiated in order  
69 to stay the proposed transfer or discharge for good cause, that the  
70 resident may represent himself or herself or be represented by legal  
71 counsel, a relative, a friend or other spokesperson, and information as  
72 to bed hold and nursing home readmission policy when required in  
73 accordance with section 19a-537. The notice shall also include the  
74 name, mailing address and telephone number of the State Long-Term  
75 Care Ombudsman. If the resident is, or the facility alleges a resident is,  
76 mentally ill or developmentally disabled, the notice shall include the  
77 name, mailing address and telephone number of the Office of  
78 Protection and Advocacy for Persons with Disabilities. The notice shall  
79 be given at least thirty days and no more than sixty days prior to the  
80 resident's proposed transfer or discharge, except where the health or  
81 safety of individuals in the facility are endangered, or where the  
82 resident's health improves sufficiently to allow a more immediate

83 transfer or discharge, or where immediate transfer or discharge is  
84 necessitated by urgent medical needs or where a resident has not  
85 resided in the facility for thirty days, in which cases notice shall be  
86 given as many days before the transfer or discharge as practicable.

87 (2) The resident may initiate an appeal pursuant to this section by  
88 submitting a written request to the Commissioner of Social Services  
89 not later than sixty calendar days after the facility issues the notice of  
90 the proposed transfer or discharge, except as provided in subsection  
91 (h) of this section. In order to stay a proposed transfer or discharge, the  
92 resident must initiate an appeal not later than twenty days after the  
93 date the resident receives the notice of the proposed transfer or  
94 discharge from the facility unless the resident demonstrates good  
95 cause for failing to initiate such appeal within the twenty-day period.

96 (d) No resident shall be transferred or discharged from any facility  
97 as a result of a change in the resident's status from self-pay or  
98 Medicare to Medicaid provided the facility offers services to both  
99 categories of residents. Any such resident who wishes to be transferred  
100 to another facility which has agreed to accept the resident may do so  
101 upon giving at least fifteen days written notice to the administrator of  
102 the facility from which the resident is to be transferred and a copy  
103 thereof to the appropriate advocate of such resident. The resident's  
104 advocate may help the resident complete all administrative procedures  
105 relating to a transfer.

106 (e) Except in an emergency or in the case of transfer to a hospital, no  
107 resident shall be transferred or discharged from a facility unless a  
108 discharge plan has been developed by the personal physician of the  
109 resident or the medical director in conjunction with the nursing  
110 director, social worker or other health care provider. To minimize the  
111 disruptive effects of the transfer or discharge on the resident, the  
112 person responsible for developing the plan shall consider the  
113 feasibility of placement near the resident's relatives, the acceptability of  
114 the placement to the resident and the resident's guardian or

115 conservator, if any, or the resident's legally liable relative or other  
116 responsible party, if known, and any other relevant factors which  
117 affect the resident's adjustment to the move. The plan shall contain a  
118 written evaluation of the effects of the transfer or discharge on the  
119 resident and a statement of the action taken to minimize such effects.  
120 In addition, the plan shall outline the care and kinds of services which  
121 the resident shall receive upon transfer or discharge. Not less than  
122 thirty days prior to an involuntary transfer or discharge, a copy of the  
123 discharge plan shall be provided to the resident's personal physician if  
124 the discharge plan was prepared by the medical director, to the  
125 resident and the resident's guardian or conservator, if any, or legally  
126 liable relative or other responsible party, if known.

127 (f) No resident shall be involuntarily transferred or discharged from  
128 a facility if such transfer or discharge is medically contraindicated.

129 (g) The facility shall be responsible for assisting the resident in  
130 finding appropriate placement.

131 (h) (1) Except in the case of an emergency, as provided in  
132 subdivision (4) of this subsection, upon receipt of a request for a  
133 hearing to appeal any proposed transfer or discharge, the  
134 Commissioner of Social Services or the commissioner's designee shall  
135 hold a hearing to determine whether the transfer or discharge is being  
136 effected in accordance with this section. A hearing shall be convened  
137 not less than ten, but not more than thirty days from the date of receipt  
138 of such request and a written decision made by the commissioner or  
139 the commissioner's designee not later than thirty days after the date of  
140 termination of the hearing or not later than sixty days after the date of  
141 the hearing request, whichever occurs sooner. The hearing shall be  
142 conducted in accordance with chapter 54. In each case the facility shall  
143 prove by a preponderance of the evidence that it has complied with  
144 the provisions of this section. Except in the case of an emergency or in  
145 circumstances when the resident is not physically present in the  
146 facility, whenever the Commissioner of Social Services receives a

147 request for a hearing in response to a notice of proposed transfer or  
148 discharge and such notice does not meet the requirements of  
149 subsection (c) of this section, the commissioner shall, not later than ten  
150 business days after the date of receipt of such notice from the resident  
151 or the facility, order the transfer or discharge stayed and return such  
152 notice to the facility. Upon receipt of such returned notice, the facility  
153 shall issue a revised notice that meets the requirements of subsection  
154 (c) of this section.

155 (2) The resident, the resident's guardian, conservator, legally liable  
156 relative or other responsible party shall have an opportunity to  
157 examine, during regular business hours at least three business days  
158 prior to a hearing conducted pursuant to this section, the contents of  
159 the resident's file maintained by the facility and all documents and  
160 records to be used by the commissioner or the commissioner's  
161 designee or the facility at the hearing. The facility shall have an  
162 opportunity to examine during regular business hours at least three  
163 business days prior to such a hearing, all documents and records to be  
164 used by the resident at the hearing.

165 (3) If a hearing conducted pursuant to this section involves medical  
166 issues, the commissioner or the commissioner's designee may order an  
167 independent medical assessment of the resident at the expense of the  
168 Department of Social Services which shall be made part of the hearing  
169 record.

170 (4) In an emergency the notice required pursuant to subsection (c) of  
171 this section shall be provided as soon as practicable. A resident who is  
172 transferred or discharged on an emergency basis or a resident who  
173 receives notice of such a transfer or discharge may contest the action  
174 by requesting a hearing in writing not later than twenty days after the  
175 date of receipt of notice or not later than twenty days after the date of  
176 transfer or discharge, whichever is later, unless the resident  
177 demonstrates good cause for failing to request a hearing within the  
178 twenty-day period. A hearing shall be held in accordance with the

179 requirements of this subsection not later than fifteen business days  
180 after the date of receipt of the request. The commissioner, or the  
181 commissioner's designee, shall issue a decision not later than thirty  
182 days after the date on which the hearing record is closed.

183 (5) Except in the case of a transfer or discharge effected pursuant to  
184 subdivision (4) of this subsection, (A) an involuntary transfer or  
185 discharge shall be stayed pending a decision by the commissioner or  
186 the commissioner's designee, and (B) if the commissioner or the  
187 commissioner's designee determines the transfer or discharge is being  
188 effected in accordance with this section, the facility may not transfer or  
189 discharge the resident prior to fifteen days from the date of receipt of  
190 the decision by the resident and the resident's guardian or conservator,  
191 if any, or the resident's legally liable relative or other responsible party  
192 if known.

193 (6) If the commissioner, or the commissioner's designee, determines  
194 after a hearing held in accordance with this section that the facility has  
195 transferred or discharged a resident in violation of this section, the  
196 commissioner, or the commissioner's designee, may require the facility  
197 to readmit the resident to a bed in a semiprivate room or in a private  
198 room, if a private room is medically necessary, regardless of whether  
199 or not the resident has accepted placement in another facility pending  
200 the issuance of a hearing decision or is awaiting the availability of a  
201 bed in the facility from which the resident was transferred or  
202 discharged.

203 (7) A copy of a decision of the commissioner or the commissioner's  
204 designee shall be sent to the facility and to the resident, the resident's  
205 guardian, conservator, if any, legally liable relative or other  
206 responsible party, if known. The decision shall be deemed to have  
207 been received not later than five days after the date it was mailed,  
208 unless the facility, the resident or the resident's guardian, conservator,  
209 legally liable relative or other responsible party proves otherwise by a  
210 preponderance of the evidence. The Superior Court shall consider an

211 appeal from a decision of the Department of Social Services pursuant  
212 to this section as a privileged case in order to dispose of the case with  
213 the least possible delay.

214 (i) A resident who receives notice from the Department of Social  
215 Services or its agent that the resident is no longer in need of the level of  
216 care provided by a facility and that, consequently, the resident's  
217 coverage for facility care will end, may request a hearing by the  
218 Commissioner of Social Services in accordance with the provisions of  
219 section 17b-60. If the resident requests a hearing prior to the date that  
220 Medicaid coverage for facility care is to end, Medicaid coverage shall  
221 continue pending the outcome of the hearing. If the resident receives a  
222 notice of denial of Medicaid coverage from the department or its agent  
223 and also receives a notice of discharge from the facility pursuant to  
224 subsection (c) of this section and the resident requests a hearing to  
225 contest each proposed action, the department may schedule one  
226 hearing at which the resident may contest both actions.

227 Sec. 2. Subsection (b) of section 46b-37 of the general statutes is  
228 repealed and the following is substituted in lieu thereof (*Effective*  
229 *October 1, 2013*):

230 (b) Notwithstanding the provisions of subsection (a) of this section,  
231 it shall be the joint duty of each spouse to support his or her family,  
232 and both shall be liable for: (1) The reasonable and necessary services  
233 of a physician or dentist; (2) hospital expenses rendered the husband  
234 or wife or minor child while residing in the family of his or her  
235 parents; (3) to the extent permissible under federal law, nursing home  
236 expenses rendered the husband or wife; (4) the rental of any dwelling  
237 unit actually occupied by the husband and wife as a residence and  
238 reasonably necessary to them for that purpose; and [(4)] (5) any article  
239 purchased by either which has in fact gone to the support of the  
240 family, or for the joint benefit of both.



This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	19a-535
Sec. 2	<i>October 1, 2013</i>	46b-37(b)

***Statement of Purpose:***

To ameliorate the debt owed nursing home facilities for uncompensated care by allowing for the discharge or transfer of patients who fail to pay the facilities the required applied income and by requiring spouses of institutionalized individuals to pay for nursing home expenses to the extent permissible under federal law.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*